

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Daniel C.,

Case No. 18-cv-2695 (TNL)

Plaintiff,

v.

ORDER

Andrew M. Saul, *Commissioner of Social
Security*,

Defendant.

Karl E. Osterhout, Osterhout Disability Law, LLC, 521 Cedar Way, Suite 200,
Oakmont, PA 15139, and Edward C. Olson, Disability Attorneys of Minnesota, 331
Second Avenue South, Suite 420, Minneapolis, MN 55401 (for Plaintiff); and

Kizuwanda Curtis, Assistant Regional Counsel, Social Security Administration, 1301
Young Street, Suite A702, Dallas TX 75202 (for Defendant).

Plaintiff Daniel C., through his attorneys, brought suit contesting Defendant Commissioner of Social Security's denial of his application for disability insurance benefits ("DIB") under Title II of the Social Security Act, 42 U.S.C. §§ 401–34. The Court granted Plaintiff's motion for summary judgment, Defendant's motion for summary judgment was denied, and the Commissioner's decision was vacated as to steps four through five and this case was remanded for further proceedings. (ECF No. 18).

Plaintiff then filed a Petition for Attorney Fees under the Equal Access to Justice Act. (ECF No. 21). Plaintiff requests an award of attorney's fees totaling \$9,381.77 for 46.3 hours of work, as well as \$400.00 in costs for filing the complaint. (ECF Nos. 21, 22). In support of the motion, Plaintiff's counsel has provided an itemized list of the legal

services performed and time worked. (ECF No. 22). Defendant submitted no opposition. D. Minn. LR 7.1(b)(2) (permitting seven days to respond to a motion).

I. ANALYSIS

A. Legal Standard

Under the Equal Access to Justice Act (“EAJA”), “a party who prevails in a civil action against the United States—including a lawsuit seeking judicial review of administrative action—shall be awarded fees and expenses ‘unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.’” *Rapp v. Colvin*, Case No. 12-cv-2473 (PJS/TNL), 2014 WL 5461889, at *1 (D. Minn. Oct. 27, 2014) (quoting 28 U.S.C. § 2412(d)(1)(A)). Fees must be awarded under the EAJA to a prevailing social security claimant unless the Commissioner’s “position in denying benefits was substantially justified.” *Welter v. Sullivan*, 941 F.2d 674, 676 (8th Cir. 1991). The Commissioner “bears the burden of proving the denial of benefits was substantially justified.” *Id.*

The Commissioner cannot dispute that Plaintiff was the prevailing party. Nor does the Commissioner raise any argument that his position in denying benefits was substantially justified. In fact, the Commissioner failed to respond to Plaintiff’s motion at all. The Court can only interpret the non-filing as acquiescence to Plaintiff’s requested fees and costs. Finally, nothing in the record suggests that awarding fees and costs would be unjust. Accordingly, Petitioner’s motion is granted in full.

II. CONCLUSION

Based upon the foregoing and all of the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that: Plaintiff's Petition for Attorney Fees under the Equal Access to Justice Act, (ECF No. 21), is **GRANTED** as follows: Plaintiff is **AWARDED** \$9,381.77 in attorney's fees and \$400.00 in costs. This award shall fully and completely satisfy any and all claims for fees, costs, and/or expenses that may have been payable to Plaintiff in this matter pursuant to the EAJA.

Date: April 1, 2020

s/ Tony N. Leung
Tony N. Leung
United States Magistrate Judge
District of Minnesota

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